

1 JANETTE WIPPER (#275264)
2 Chief Counsel
3 Janette.Wipper@dfeh.ca.gov
4 MELANIE PROCTOR (#228971)
5 Assistant Chief Counsel
6 Melanie.Proctor@dfeh.ca.gov
7 SIRITHON THANASOMBAT (#270201)
8 Senior Staff Counsel
9 Siri.Thanasombat@dfeh.ca.gov
10 JEANETTE HAWN (#307235)
11 Staff Counsel
12 Jeanette.Hawn@dfeh.ca.gov
13 DEPARTMENT OF FAIR EMPLOYMENT
14 AND HOUSING
15 2218 Kausen Drive, Suite 100
16 Elk Grove, CA 95758
17 Telephone: (916) 478-7251
18 Facsimile: (888) 382-5293
19
20 Attorneys for Plaintiff
21 Department of Fair Employment and Housing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Case No. 5:20-cv-04374-EJD

**PLAINTIFF DFEH'S EX PARTE
APPLICATION TO EXTEND TIME FOR
SERVICE ON DEFENDANTS**

CISCO SYSTEMS, INC., a California Corporation; SUNDAR IYER, an individual; RAMANA KOMPELLA, an individual,

Plaintiff,

VS.

Defendants.

23 The California Department of Fair Employment and Housing (DFEH) brings this Ex Parte
24 Application to Extend Time for Service on Defendants pursuant to Rule 4(m) of the Rules of Civil
25 Procedure and Civil Local Rule 7-10. DFEH respectfully requests an extension of time for service on
26 Defendants Cisco Systems, Inc., Sundar Iyer, and Ramana Kompella in light of the showing of good
27 cause.

Good cause exists for the extension of time for service. Under Rule 4(m):

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

DFEH filed its Complaint alleging violations of Title VII and the Fair Employment and Housing Act on June 30, 2020. Ninety (90) days after the filing of the Complaint is September 28, 2020. Through email from Defendants' known counsel Ms. Jennifer Lotz, all three Defendants agreed to waive service of the summons and Complaint. On or around September 14, 2020, Ms. Lotz approached DFEH seeking a stipulation to amend the case management schedule because she stated she no longer represents the two individual Defendants, Mr. Iyer and Mr. Kompella. She requested additional time for them to secure separate counsel and for new counsel to become familiar with the case. DFEH agreed to the extension of time. When DFEH asked Ms. Lotz to confirm Mr. Iyer's and Mr. Kompella's addresses for service, she emailed back stating that she would still accept service on their behalf, even though she no longer represented them. Declaration of Siri Thanasombat in Support of Ex Parte Application to Extend Time for Service on Defendants ("Thanasombat Dec.") ¶¶ 3-7.

DFEH contacted Ms. Lotz to inquire whether she would accept electronic service of the waiver and return it so it could be filed on September 28, 2020. Ms. Lotz indicated that she had to check with her client. On Saturday, September 26, 2020, Ms. Lotz informed DFEH that her firm no longer represents any of the three Defendants in this matter, and thus, she is no longer authorized to accept service on behalf of any Defendant. Thanasombat Dec. ¶¶ 8, 9. DFEH served corporate Defendant Cisco Systems, Inc. on Monday, September 28, 2020, prior to filing this request. Thanasombat Dec. ¶ 10. In the event personal service is not effected by September 28, 2020, DFEH respectfully requests an extension of time for service on Defendants.

Upon a showing of good cause, Rule 4(m) requires a district court to grant an extension of time. *Efaw v. Williams*, 473 F.3d 1038, 10401 (9th Cir. 2007) (citing former 120-day provision). The rule also permits the district court to grant an extension even in the absence of good cause. *Id.*; see also *Henderson v. United States*, 517 U.S. 654, 661 (1996) (recognizing that the "provision operates

1 not as an outer limit subject to reduction, but as an irreducible allowance"). While not limitless, the
2 Court's discretion to extend time for service under Rule 4(m) is broad. *Efaw*, 473 F.3d at 1041.

3 In exercising its discretion, courts have considered factors such as "a statute of limitations bar,
4 prejudice to the defendant, actual notice of a lawsuit, and eventual service." *Id.* Here, the totality of the
5 circumstances favor granting the extension of time for service. First, Defendants' late changes in
6 counsel have impeded Plaintiff's prosecution of the case. Second, there is little to no prejudice to
7 Defendants since each expected to be served with the Complaint and already have waived service of
8 summons. Third, each Defendant has actual notice of the lawsuit as the Parties recently stipulated to
9 amend the Case Management Schedule (ECF-13). Fourth, Plaintiff has made good-faith efforts to
10 ensure service before time elapsed by contacting known counsel for Defendants, requesting Defendants
11 accept electronic service of the notice and waiver form, arranging for personal service on each
12 Defendant, and filing this Ex Parte Application. *See Mann v. American Airlines*, 324 F.3d 1088, 1089-
13 91 (9th Cir. 2003) (granting extension of time when plaintiff took timely steps to serve summons after
14 it had been put on notice); *Higley v. Cessna Aircraft Co.*, 2012 WL 12878652, at *2 (C.D. Cal. Sept.
15 18, 2012) (granting extension of time even when plaintiff had not attempted service on defendant
16 before filing ex parte application).

17 In light of the showing of good cause, DFEH requests that the Court permit additional time for
18 Plaintiff to effect service on Defendants.

19

20 Dated: September 28, 2020

Respectfully submitted,

21

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

22

23

By: /s/ Siri Thanasombat

24

SIRI THANASOMBAT

25

Senior Staff Counsel

26

Attorneys for Plaintiff

27

CALIFORNIA DEPARTMENT OF
FAIR EMPLOYMENT AND HOUSING

28

1
2 **PROPOSED ORDER**

3 IT IS SO ORDERED. The DFEH shall have an additional ~~90~~⁴⁵ days to serve Defendants, until
4 Novemer 13,
~~December 28,~~ 2020.



5
6 HON. EDWARD J. DAVILA
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28